

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EMC CORPORATION and EMC ISRAEL
DEVELOPMENT CENTER, LTD.,

Plaintiffs,

V.

ZERTO, INC.,

Defendant.

Civil Action No. 12-956-GMS

ORDER

At Wilmington this 13th day of January 2015, the court having considered the defendant's motion, the pleadings, and the applicable law;

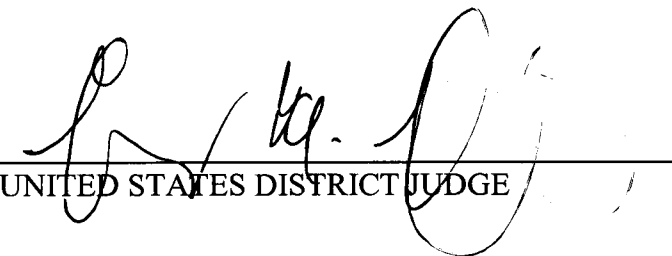
IT IS HEREBY ORDERED THAT the Motion for Judgment on the Pleadings on Count III of the First Amended Complaint (D.I. 11) is DENIED.

The court is persuaded that the merits of the instant motion would be better addressed through a motion for summary judgment. The parties disagree whether motions for judgment on the pleadings pursuant to Rule 12(c) are favored by the courts, but there can be no dispute that litigation in this case is now well underway, with discovery scheduled to close in the coming days. (D.I. 68, ¶ 6.) Thus, the defendant’s argument that this motion would “streamlin[e] litigation by dispensing with needless discovery” has little weight. (D.I. 135 at 2.) Moreover, the defendant asks the court to consider substantial evidence beyond the face of the pleadings. With little policy incentive to do so at this late stage, the court declines to address the motion for judgment on the pleadings. *See* Fed. R. Civ. P. 12(d) (“If, on a motion under Rule . . . 12(c),

matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.”).

Should the issue remain in dispute, the parties shall comply with the court’s procedures for seeking summary judgment, as outline in the Amended Scheduled Order. (D.I. 68, ¶ 9.) The court recognizes that the parties asserted a considerable number of arguments in briefing the present motion, between the initially submitted briefs and the subsequent sur-replies. The court recommends that the parties present a more distilled, cogent version of their positions at the summary judgment stage.

The plaintiff’s request for an award of legal fees associated with the present motion is also hereby DENIED.



UNITED STATES DISTRICT JUDGE